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## ARIZONA ATTORNEY GENERAL

GARY K. NELSON, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

December 24, 1969

DEPARTMENT OF LAW OPINION NO. 70-2 (R-34)

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REQUESTED BY: THE HONORABLE CLOVIS C. CAMPBELL  
Arizona State Senator

QUESTION: May the Commissioner of the State Department of Public Welfare, with the approval of the Department of Finance, pursuant to A.R.S. Section 35-173, as amended, transfer funds appropriated by Chapter 144, Subdivision 39, Session Laws of Arizona 1969 from one class to another of the following appropriations:

1. Medical Assistance Aged - Administration.
2. Older Americans Act - Administration
3. Aid to the Blind
4. Blind Services
5. Aid to Dependent Children
6. General Assistance
7. Aid to Permanently and Totally Disabled
8. Emergency Relief
9. Surplus Commodity Distribution
10. Foster Home Care
11. Old Age Assistance
12. Public Assistance Services
13. Tuberculosis Control

14. Medical Assistance for the Aged?

ANSWER: Yes.

The budgetary and fiscal provisions for state agencies are contained in Chapter 1, Title 35 of Arizona Revised Statutes. The provisions for the classification and allotment of funds are contained in Art. 4, Chapter 1, Title 35 of Arizona Revised Statutes.

A.R.S. Section 35-172, as amended, reads as follows:

"A. For the purpose of accounting, budgeting, allotting and reporting, all expenditures authorized by either the general appropriation act or by any separate or special act, shall be classed as appropriated by the legislature.

B. Expenditures under the general classes provided by subsection A shall be subdivided by the commissioner of finance in accordance with the objects and character of the expenditures and in such manner that the true and actual cost of each object will be reflected perpetually on the commissioner's books."

The pertinent portions of A.R.S. Section 35-173, as amended, read as follows:

"A. When an appropriation is authorized, and before any obligation thereon is incurred, the head of the budget unit to which the appropriation is made shall prepare an allotment request furnished by the commissioner of finance, subdividing the appropriation to coincide with the classes and subclasses of expenditures employed in the accounts of the commissioner of finance, and the commissioner of finance shall allot the appropriation accordingly, provided that the head of a budget unit may transfer funds from one class

or subclass of expenditures to another, if the budget unit head obtains the approval of the department of finance. No transfer to or from personal services from any other budget class or subclass of expenditures shall be permitted.

B. No allotment or expenditure shall be made for an object not within the purpose of the appropriation, and nothing in this chapter shall be construed to authorize the expenditure of an appropriation for a purpose other than for which it was made.

\* \* \*

Both of the foregoing statutes were amended by Ariz. Sess. Laws 1968, Ch. 89, Sections 38 and 39, which were conditional upon the approval of a constitutional amendment abolishing the office of State Auditor, Art. 5, Sections 1 and 9 of the Constitution of Arizona. The abolition of the office of the auditor was upheld in State ex rel. Nelson v. Jordan, 104 Ariz. 193, 450 P.2d 383 (1969). Appeal from the Supreme Court of Arizona was dismissed by the Supreme Court of the United States for want of a substantial federal question. Jordan v. Arizona ex rel. Nelson, Attorney General, \_\_\_\_ U.S. \_\_\_\_, 90 S.Ct. 24, 24 L.Ed.2d 4 (1969).

Prior to the statutory changes, A.R.S. Sections 35-172 and 35-173, in part, read as follows:

"§ 35-172. Classification and standardization of appropriations

A. For the purpose of accounting, budgeting, allotting and reporting, all expenditures authorized by either the general appropriation act or by any separate or special act, shall be classed as one or more of the following general classes:

1. 'Current expenditures.'

2. 'Fixed charges.'
3. 'Capital outlay.'
4. 'Redemption of debt.'

B. Expenditures under the general classes provided by subsection A shall be subdivided by the state auditor in accordance with the objects and character of the expenditures and in such manner that the true and actual cost of each object will be reflected perpetually on the auditor's books.

C. 'Current expenditures' shall be subdivided into:

1. Personal services.
2. Contractual services, including communication and travel.
3. Supplies, materials and parts.
4. Current charges.

D. 'Fixed charges' shall be subdivided into:

1. Interest.
2. Pensions, public assistance and rehabilitation.
3. Apportionments to political subdivisions of the state.

E. 'Capital outlay' shall be subdivided into:

1. Equipment.

2. Buildings and improvements.
3. Land.
4. Livestock.
5. Highways and bridges.

F. 'Redemption of debt' includes only payment of bonded indebtedness.

G. The auditor may further subdivide any allotments into such subclasses as are necessary to effect a proper and comprehensive system of accounting.

H. When, in any law authorizing the expenditure of public money, the object or purpose is stated in such terms as 'salaries and wages', 'operations', 'travel', 'capital investment' or 'repairs and replacements', such terms shall import their respective popular and ordinary meaning and the appropriation so authorized shall be allotted on the records of the auditor to the corresponding objects as classified and standardized in this section or to such further subclassification as the auditor adopts, provided that the actual purpose shall not be defeated."

"§ 35-173. Allotment of appropriations; limitations; exceptions

A. When an appropriation is authorized, and before any obligation thereon is incurred, the head of the budget unit to which the appropriations is made shall prepare an allotment request furnished by the auditor, subdividing the appropriation to coincide with the classes and subclasses of expenditures employed in the

accounts of the auditor, and the auditor shall allot the appropriation accordingly.

B. No allotment or expenditure shall be made for an object not within the purpose of the appropriation, and nothing in this chapter shall be construed to authorize the expenditure of an appropriation for a purpose other than for which it was made.

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Comparing the amendments of A.R.S. Sections 35-172 and 35-173 with the prior statutes, it is clear that the legislature has made significant changes. A.R.S. Section 35-172, in part, prior to being amended in 1968, required ". . . for the purpose of accounting, budgeting, allotting and reporting, all expenditures authorized by . . . appropriation . . . be classed as one or more of the following general classes: 1. 'Current expenditures.', 2. 'Fixed charges.', 3. 'Capital outlay.', 4. 'Redemption of debt.' " The statute further provided for the subdivision of current expenditures, fixed charges, and capital outlay. The auditor was permitted to "subdivide any allotments into such subclasses as are necessary to effect a proper and comprehensive system of accounting."

Subsection A of A.R.S. Section 35-172, as amended in 1968, now states that all expenditures authorized by appropriation" . . . shall be classed as appropriated by the legislature." Subsection B of the same statute provides, inter alia, that the expenditures, pursuant to the general classes designated by appropriation, shall be subdivided by the commissioner of finance in accordance with the objects and character of the expenditure.

Subsection A of A.R.S. Section 35-173, prior to its 1968 and 1969 amendments, provided that when an appropriation was authorized and before any obligation was incurred, the head of the budget unit was required to prepare an allotment request furnished by the state auditor, subdividing the appropriation to coincide with the classes and sub-

classes of expenditures employed in the accounts of the state auditor who was required to allot the appropriation accordingly.

Recent amendments of subsection A, by Ariz. Sess. Laws 1968, Ch. 42, Section 1 and the Ariz. Sess. Laws 1969, Ch. 139, Section 2, conferred statutory powers upon the commissioner of finance that never had been legislatively conferred upon the office of the state auditor. This significant change provides that the head of a budget unit may transfer funds from one class or subclass of expenditures to another if the department of finance approves the transfer. The sole statutory exception is that any transfer to or from personal services from any other budget class or subclass is prohibited.

Subsection B of A.R.S. Section 35-173 provides that "No allotment or expenditure shall be made for an object not within the purpose of the appropriation, and nothing . . . shall be construed to authorize the expenditure of an appropriation for a purpose other than for which it was made." This particular statutory provision has not been amended.

The fundamental rule of statutory construction is to ascertain and give effect to legislative intent. Hicks v. Krigbaum, 13 Ariz. 237, 108 P. 482 (1910); State v. Borah, 51 Ariz. 318, 76 P.2d 757 (1938); Westbound v. Croaff, 68 Ariz. 36, 198 P.2d 842 (1948). Statutes are construed to carry out the purpose and intent of the legislature. Industrial Commission v. Harbor Ins. Co., 104 Ariz. 73, 449 P.2d 1 (1968). All other rules of construction are subsidiary in determining the intent of the legislature. Valley Nat'l Bank of Phoenix v. Apache County, 57 Ariz. 459, 114 P.2d 883 (1941); State v. Allred, 102 Ariz. 102, 425 P.2d 572 (1967).

An analysis of A.R.S. Section 35-173 A, as amended, indicates that the legislature clearly intended to give authority for the approval of a transfer of funds from one class or subclass of expenditure to another to the department of finance. The sole limitation relates to personal services. Subsection B of A.R.S. Section 35-173 must be construed in conjunction with Subsection A to give effect to both. Trickel v.


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Rainbo Baking Company of Phoenix, 100 Ariz. 222, 412 P.2d 852 (1966). The only reasonable interpretation of Subsection B is that an expenditure cannot be made for an object not within the purposes indicated in the classes established by the legislative appropriation. To interpret such a provision as a limitation upon the power of the head of a budget unit and the department of finance to transfer funds would, in effect, defeat the legislative purpose and intent as established in A.R.S. Section 35-173 A, as amended.

The fourteen categories, listed in your question, are the classes that the legislature established by appropriation. It is our opinion that funds may be transferred from one class to another class in the appropriations considered herein provided that the proper steps as to a request and approval are obtained as required by A.R.S. Section 35-173 A, as amended.

The legislature, being the constitutional body of the state with control over the appropriation of public monies, could have, if it had so desired, restricted the transfer from one class to another by so designating any class in the appropriation to be exempt or excluded from the transfer provision of subsection A of A.R.S. Section 35-173, as amended. This the legislature has not done.

Respectfully submitted,



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The Attorney General

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